

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

ASHLEY M. COREY,

Plaintiff,

vs.

KILOLO KIJAKAZI,  
Acting Commissioner of Social  
Security,

Defendant.

CV 22-95-BLG-SPW

ORDER GRANTING  
MOTION TO DISMISS

Before the Court is Defendant Kilolo Kijakazi's Motion to Dismiss. (Doc. 8). Defendant argues that Plaintiff Ashley Corey failed to commence her suit by August 10, 2022, within the applicable 60-day period authorized for social security appeals under 42 U.S.C. § 405 (g). (Doc. 8 at 2).

The parties dispute when Plaintiff actually filed the Complaint. The Court docket indicates that the Complaint was filed on September 6, 2022. (Doc. 1).

Plaintiff argues that the Complaint was filed on August 5, 2022, within the applicable 60-day period. (Doc. 9 at 2). Plaintiff's attorney apparently attempted to file the Complaint on August 5, 2022, but he failed to finalize the filing after paying the filing fee. As a result, the clerks never received notification of the Complaint and consequently never filed it. (*See* Doc. 9-1). Plaintiff's counsel

asserts that court staff “recognized that the Complaint had been received and the receipt for filing issued” but this assertion is undermined by Plaintiff’s own exhibit. (*See* Docs. 9-1 and 9-4). In an email, Court Clerk Amanda Carrillo wrote: “O’Brien went in to file a new shell case on August 5th [2022], it looks like he paid the \$402.00 filing in the shell case but did not finish out the filing in CM to create an NEF [notice of electronic filing] notifying the courts that a new shell case came through. [ . . . ] I ran the pay.gov internet history payments made and found where he paid but never finalized the filing in CM/ECF.” (Doc. 9-4).

Rule 3 of the Federal Rules of Civil Procedure states that an action is commenced by filing a complaint with the court. District of Montana Local Rule 3.1 (d)(1) states: “Electronic Filing. Any attorney or party who is authorized to file documents with the court electronically may file a new case by following procedures established by the clerk of court and published on the court’s website. Failure to comply with the clerk’s procedures may result in a delay in filing.” The “CM/ECF User’s Guide for Filing in the District of Montana” on the District website make clear that a filing is not completed merely upon payment; there are several other steps after payment. “CM/ECF User’s Guide for Filing in the District of Montana,” at 26-31, [https://www.mtd.uscourts.gov/sites/mtd/files/CMECF\\_User\\_Guide.pdf](https://www.mtd.uscourts.gov/sites/mtd/files/CMECF_User_Guide.pdf)

Plaintiff asserts that the Complaint was filed on August 5, apparently because the filing fee was accepted, but provides no citation or authority supporting the conclusion that an action is filed prior to the court receiving notice of the filing. By failing to finalize the filing, no one at the clerk's office was notified of the intended filing. Furthermore, Plaintiff did not receive email confirmation that the action was filed, as would occur had the Complaint been properly filed. (See Doc. 11; *see also* "CM/ECF User's Guide for Filing in the District of Montana," at 26-31, [https://www.mtd.uscourts.gov/sites/mtd/files/CMECF\\_User\\_Guide.pdf](https://www.mtd.uscourts.gov/sites/mtd/files/CMECF_User_Guide.pdf)).

As such, the Complaint was not properly filed until September 6, 2022, and therefore outside of the applicable 60-day window to timely appeal. The Court does not have subject matter jurisdiction and consequently the Court GRANTS Defendant's Motion to Dismiss. (Doc. 8). The matter is DISMISSED with prejudice. The Clerk of Court shall enter judgment and close the case.

DATED this 26<sup>th</sup> day of June, 2023.

  
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SUSAN P. WATTERS  
United States District Judge